

TITLE 14

ENVIRONMENT AND NATURAL RESOURCES

Table of Contents

CHAPTER I - ENVIRONMENTAL INFRACTIONS

<u>14.01</u>	<u>General Provisions</u>	
14.01.01	Purpose	1
14.01.02	Jurisdiction.....	1
14.01.03	Severability	1
14.01.04	Sovereign Immunity.....	1
<u>14.02</u>	<u>Definitions</u>	
14.02.01	Definitions	2
<u>14.03</u>	<u>Permitting Procedures</u>	
14.03.01	Express Written Approval of the Tribe	7
14.03.02	Permits Issued by Environmental Committee or Natural Resources Department	8
14.03.03	“Significantly Affecting the Environment”	8
<u>14.04</u>	<u>Classification of Penalties</u>	
14.04.01	Classification of Penalties	10
<u>14.05</u>	<u>Cultural Resources</u>	
14.05.01	Notification of Tribal Council	10
14.05.02	Failure to Halt Construction	10
14.05.03	Digging/Excavation/Removal.....	10
14.05.04	Destruction of Cultural Resource.....	10
<u>14.06</u>	<u>Excavation/Dredging/Filling</u>	
14.06.01	Waters/Wetlands/Shorelines.....	11
14.06.02	Tribal Lands.....	11
14.06.03	Steep Slopes.....	11
14.06.04	Use of Fill Material	12

14.06.05	Earth or Construction Debris	12
14.06.10	Groundwater Access	12
<u>14.07</u>	<u>Fires</u>	
14.07.01	Burning Prohibited Substances	13
14.07.02	Burning Without a Permit	13
14.07.03	Burning on Shorelines	13
14.07.04	Leaving a Fire Unattended	14
14.07.05	Burning During Air Pollution Episode	14
14.07.06	Burning at Location Designated a Fire Hazard	14
14.07.07	Failure to Report	14
14.07.08	Failure to Control.....	14
<u>14.08</u>	<u>Livestock</u>	
14.08.01	Pasturing Livestock within Buffer Zone	15
<u>14.09</u>	<u>Motorized Vehicles</u>	
14.09.01	Unauthorized Use of Motor Vehicles	15
14.09.02	Abandoned Vehicles	15
<u>14.10</u>	<u>Pesticides</u>	
14.10.01	Pesticide Application	15
14.10.02	Application within Buffer Zone.....	16
14.10.03	Pesticide Storage.....	16
<u>14.11</u>	<u>Sewage Disposal</u>	
14.11.01	Failure to Connect to Sewage System.....	16
14.11.02	Discharging Sewage to Water or upon the Ground	16
14.11.03	Failure to Pump On-site Sewage System	16
14.11.04	Failure to Repair On-site Sewage System.....	16
14.11.05	Failure to Comply with Federal Requirement	17
14.11.06	Construction of On-site Sewage System within Buffer Zone	17
<u>14.12</u>	<u>Spills</u>	
14.12.01	Spill of Hazardous Substance or Toxic Pollutant	17
14.12.02	Spill of Pollutant	17
14.12.03	Failure to Notify.....	17
14.12.04	Reparation.....	18
14.12.05	Negligence	18

14.12.06	Willful Misconduct/Reckless Disregard	18
<u>14.13</u>	<u>Tribal Resources</u>	
14.13.01	Vandalism/Destruction of Lands	18
14.13.02	Unauthorized Use of Lands	18
14.13.03	Unauthorized Removal of Tribal Resources	19
14.13.04	Unauthorized Access to Water	19
14.13.05	Depletion of Tribal Water Resources.....	19
14.13.06	Introduction of Fish or Aquatic Organisms	19
14.13.07	Forfeiture of Illegally Possessed Resources	19
14.13.10	Trespass by Non-Indians	20
<u>14.14</u>	<u>Waste Disposal/Dumping</u>	
14.14.01	Toxic or Hazardous Substances	20
14.14.02	Pollutants	20
14.14.03	Littering	20
<u>14.15</u>	<u>Wood Cutting</u>	
14.15.01	Cutting, Removing or Selling Timber without a Permit	21
14.15.02	Cutting, Removing or Selling Firewood	21
14.15.03	Cutting Wood in Sensitive Areas.....	21
14.15.04	Forfeiture of Illegally Possessed Wood	21
<u>14.16</u>	<u>Enforcement Procedures</u>	
14.16.01	Who May Enforce.....	21
14.16.02	Duty to Report/Abate Danger	22
14.16.03	Power of Enforcement.....	22
14.16.04	Searches with a Warrant.....	22
14.16.05	Seizure of Items Taken or Used in Violation of this Ordinance.....	22
14.16.06	Notice of Violation.....	23
14.16.07	Person Receiving Notice – Identification and Detention	23
14.16.08	Service of Notice.....	23
14.16.09	Cease and Desist Orders.....	24
14.16.10	Clean-up Orders	24
14.16.11	Request for Court Order	25
14.16.12	Appeal of Cease and Desist Order or Clean-up Order.....	25
<u>14.17</u>	<u>Court Procedures</u>	
14.17.01	Rights of Parties.....	25
14.17.02	No Right to Jury Trial	25

14.17.03	Hearing	26
14.17.04	Appeals	26
<u>14.18</u>	<u>Power of the Court</u>	
14.18.01	Power of the Court – Generally	26
14.18.02	Guideline for Assessing Penalties.....	26
14.18.03	Continuing Violations	27
14.18.04	Community Service.....	27
14.18.05	Disposition of Seized Property	27
14.18.06	Restraining Orders and Injunctions.....	28
14.18.07	Penalties for Failure to Comply	28
14.18.08	Costs of Clean-Up/Actual Damages	28
14.18.09	Joint and Several Liability	28
14.18.10	Attorney’s Fees and Costs	28

CHAPTER II - FISHING

<u>14.19</u>	<u>General Provisions</u>	
14.19.01	Intent	29
14.19.02	Exercise of Fishing Rights.....	29
14.19.03	Definition.....	29
14.19.04	Presumption	30
14.19.05	Violation of Regulations	30
14.19.06	Jurisdiction.....	30
<u>14.20</u>	<u>Right to Fish</u>	
14.20.01	Who May Exercise the Tribal Right to Fish.....	31
<u>14.21</u>	<u>Identification</u>	
14.21.01	Identification Cards and Boat Plaques	33
14.21.02	Issuance of Identification Cards	34
<u>14.22</u>	<u>Taxes</u>	
14.22.01	Tribal Fish Tax.....	35
<u>14.23</u>	<u>Regulatory Framework</u>	
14.23.01	Annual Fishing Regulations	36
14.23.02	Emergency Fishing Regulations	36

14.23.03	Nisqually Fish Commission.....	37
14.23.04	Fishing Locations.....	38
14.23.05	Fishery Records of Catch Not Sold.....	38
14.23.06	Licensed Fish Buyers to Obtain Consent	39
14.23.07	Fisheries Management Personnel	39
14.23.08	Hook-and-Line Fishing	39
14.23.09	Enforcement.....	40
14.23.10	Penalties.....	41
14.23.11	Due Process of Law	42
14.23.12	Severability	42

TITLE 14
ENVIRONMENT AND NATURAL RESOURCES

CHAPTER I – ENVIRONMENTAL INFRACTIONS

14.01 GENERAL PROVISIONS

14.01.01 Purpose

The Nisqually Indian Tribe adopts this Environmental Infractions Ordinance as a mechanism for handling environmental infractions that occur within the jurisdiction of the Nisqually Indian Tribe. The infractions enumerated in this code are wrongful acts which negatively affect the health, welfare and integrity of the Nisqually Indian Tribe. This ordinance provides for the Tribe to regulate acts harmful to the environment and to impose penalties for such acts.

Historical and Statutory Notes

1. This Chapter enacted October 9, 1997.
2. The word “code” changed to “subchapter,” “section” changed to “subsection,” and “ordinance” changed to “subchapter” throughout this Title to establish consistency with the 2003 Tribal Code Formatting Amendments.
3. “Adopt” changed to “adopts” in 2003 Code Formatting Amendments.
4. The word “subchapter” changed to “chapter” throughout this Title during 2009 formatting changes.

14.01.02 Jurisdiction

Jurisdiction shall extend over all lands and waters of the Nisqually Indian Tribe as defined herein and over all persons whether Indian or non-Indian.

14.01.03 Severability

If any provision or application of this ordinance is determined by court review to be invalid, such determination does not render such provision inapplicable to other persons or circumstances nor invalidate any other provision of this ordinance.

14.01.04 Sovereign Immunity

The sovereign immunity of the Nisqually Indian Tribe shall in no manner be waived by this ordinance.

14.02 DEFINITIONS

14.02.01 Definitions

- (a) Buffer Zone means that area which surrounds and protects Tribal waters and wetlands from adverse impacts to their function and value. Unless otherwise established in this section, the buffer zone shall include those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark of any water body, or from the edge of a wetland. When a stream buffer overlaps a wetland buffer then the buffer requirement which best protects Tribal resources will be applied.
- (i) The following buffer requirements are established for streams and wetlands:
- (A) Class 1 Streams – 200 feet.
 - (B) Class 2 Streams – 50 feet.
 - (C) Critical Value Freshwater Wetlands – 200 feet.
 - (D) High Value Wetlands – 100 feet.
 - (E) Moderate Value Wetlands – 50 feet.
- (ii) The following activities are prohibited within a buffer zone:
- (A) Excavation, dredging or filling (without the express written approval of the Tribal Council);
 - (B) Pasturing livestock;
 - (C) Pesticide application;
 - (D) Construction of an on-site sewage system;
 - (E) Timber or firewood cutting.
- (b) Committee – The Nisqually Environmental Committee.
- (c) Court – The Nisqually Tribal Court.
- (d) Cultural Resource means any material remains of human life or activities which are of cultural or archaeological interest. This shall include all sites, objects, structures, artifacts, implements, plants, animals, and locations of cultural or archaeological interest, whether previously recorded or still unrecognized, including, but not limited to, those pertaining to historic or prehistoric American Indian or aboriginal burials, campsites, dwellings, and their habitation sites, including, but not limited to, rock shelters and caves, their artifacts and implements of culture such as projectile points, arrowheads, skeletal remains, grave goods, basketry, pestles, mauls, and grinding

stones, knives, scrapers, rock carvings and paintings, and other implements and artifacts of any material.

- (e) Day means a twenty-four (24) hour period which shall be from 12:00 a.m. to 11:59:59 p.m. in the Pacific Time zone of the United States.
- (f) Flood Plain means the following:
 - (i) 100-year flood plain – All lands which are subject to a one percent or greater chance of flooding in any year shall be considered to be within the 100-year flood plain.
 - (ii) 500-year flood plain – All lands which are subject to a 0.2 percent or greater chance of flooding in any year shall be considered to be within the 500-year flood plain.
- (g) Forest Product means any product derived from the forest including, but not limited to, timber, cedar, Christmas trees, bark, cones, foliage, firewood, seeds, beargrass, mushrooms and seedlings.
- (h) Hazardous Substance means any pollutant, or combination of pollutants, which because of its quantity, concentration, or physical, chemical or infectious characteristics, may, when released into the environment, present substantial danger to the public health or welfare, or to the environment. “Hazardous Substance” includes, but is not limited to, any substance which would be considered a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 (14).
- (i) Motor Vehicle includes, but is not limited to, any automobile, truck, farm machinery, boat, motorcycle, snowmobile or other all-terrain vehicle.
- (j) On-site Sewage System means an integrated arrangement of components for a residence, building, industrial establishment or other place not connected to a public sewer system which:
 - (i) Convey, store, treat, and/or provide subsurface soil treatment and disposal on the property where it originates, upon adjacent property or nearby property; and
 - (ii) Includes piping, treatment devices, other accessories, and soil underlying the disposal component of the initial and reserve areas.
- (k) Ordinary High Water Mark means the mark on all water bodies which will be found by examining the bed, banks and beaches and ascertaining where the presence and

- (l) actions of waters are so common and usual and so long continued in all ordinary years as to mark upon the soil a character distinct from that of the abutting upland; provided that in any area where the ordinary high water mark cannot be found, the ordinary high water mark shall be the line of mean high water.
- (m) Person means an individual, corporation, partnership, association, state, or political subdivision thereof, federal agency, state agency, municipality, commission or interstate body.
- (n) Pollutant means any substance which causes pollution including, but not limited to, dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, dead animals, chemical waste, pesticide, biological nutrient, biological material, radioactive material, heat, wrecked or discarded equipment, oil, battery acid, gasoline, paint, solvents, rock, sand, sediment or any industrial, municipal, or agricultural waste.
- (o) Pollution – Any change in the physical, chemical or biological properties of air, water or soil that can adversely affect the health, survival or activities of humans and other living organisms.
- (p) Probable Cause – When an apparent set of facts are found to exist which would cause a prudent and cautious person to believe that the accused person committed a particular infraction or that evidence of an infraction would be found on the premise or person to be searched.
- (q) Sensitive Areas include wellhead protection zones, surface waters such as lakes, ponds, seasonal and perennial streams, springs, wetlands, and their shorelines and buffer zones; saltwater shorelines, beaches and bluffs; slopes over 30% or otherwise subject to slope instability, potential landslide or significant erosion; special soil types including hydric soils, soils unsuitable for building foundations and road beds; flood plains; cemeteries; and essential habitat for animals and/or plants considered culturally important to the Tribe.
- (r) Sewage means any urine, feces, and the water carrying human wastes, including kitchen, bath and laundry wastes from residences, buildings, industrial establishments or other places. For the purposes of this code, “sewage” is generally synonymous with domestic wastewater.
- (s) Shorelands means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark.

- (t) Stream means any area where surface waters have sufficient flow to produce a defined channel or bed. A channel or bed does not have to contain water year-round to indicate the presence of a stream. A “stream” does not include artificial watercourses unless they are used to convey streams that occurred naturally prior to construction of the artificial watercourse. Streams shall be divided into the following categories:
 - (i) Class 1 Stream “Class 1 stream” means all streams that flow year-round during years of normal rainfall or, if intermittent, are used by salmonids.
 - (ii) Class 2 Stream “Class 2 stream” means all streams that are intermittent or ephemeral during years of normal rainfall and are not used by salmonids.
- (u) Toxic Pollutant means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge, spill, or release and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to EPA and/or the Nisqually Natural Resources Department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.
- (v) Tribal Lands – All lands, wetlands and tidelands over which the Nisqually Indian Tribe may legally assert jurisdiction; including, but not limited to, the following:
 - (i) All lands, wetlands and tidelands included or intended to be included within the boundaries of the Nisqually Indian Reservation as set out in its Constitution and by the government of the United States under the 1854 Treaty of Medicine Creek, (10 Stat. 1132); and
 - (ii) All lands, wetlands or tidelands outside the exterior boundaries of the reservation which are held in fee by the Nisqually Tribe or held in trust by the United States government for the benefit of the Nisqually Tribe.
- (w) Tribal Waters means all streams, lakes, ponds, marshes, salt water, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon Nisqually Tribal Lands.
- (x) Tribe means the Nisqually Indian Tribe.
- (y) Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in

saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands shall be divided into the following categories:

- (i) Critical Value Wetlands – Those wetlands which meet any one of the following criteria:
 - (A) The presence of species (plant, animal or fish) listed by the Tribe or other resource management agency as threatened or endangered, or the presence of critical habitat for those species.
 - (B) Regionally rare and unique native wetland communities.
 - (C) Wetlands having direct impact on the protection of Tribal fisheries as identified by the Nisqually Natural Resources Department.
 - (D) Wetlands having cultural and/or spiritual significance to Nisqually Tribal members.
 - (E) Irreplaceable wetland systems performing critical ecological functions.
 - (F) Wetlands having exceptional habitat value and diversity as defined by the following characteristics: (a) those wetlands equal to or greater than 5 acres in size and having three or more wetland classes, one of which is open water; or (b) wetlands having 40 to 60 percent permanent open water in dispersed patches with two or more wetland classes and connected to another habitat area, either upland or aquatic, via a stream or vegetated corridor.

- (ii) High Value Wetlands – All wetlands which do not meet the criteria for “Critical Value Wetlands,” but fulfill any of the following criteria:
 - (A) Wetlands having documented habitat recognized by the Nisqually Tribe or other resource management agencies, for sensitive or priority plant, animal or fish species.
 - (B) Wetlands with significant functions which cannot be adequately replicated through creation or restoration efforts.
 - (C) Riparian Wetlands.

- (iii) Moderate Value Wetlands – Those wetlands which are of minimum habitat value, are suitable for restoration and enhancement efforts and satisfy no “critical” or “high” value criteria. These wetlands may be characterized by the following features:
 - (A) Monotypical vegetation of similar age class;
 - (B) Hydrologically isolated systems lacking special habitat features (snags, open water component, nesting habitat, large woody debris, etc.);
 - (C) Areas which are highly disturbed by human interference and/or contaminated by waste disposal.

- (z) Wetland Classes – For the purpose of categorizing wetlands, the following shall be considered wetland classes:
 - (i) Forested (30% cover over 20 feet high);
 - (ii) Scrub-shrub (30% cover by woody vegetation under 20 feet high);
 - (iii) Emergent (marshes);
 - (iv) Open water;
 - (v) Scrub-shrub Emergent (combination of Scrub-shrub and Emergent).

- (aa) Wood Cutting is defined as the cutting of standing or downed timber for any purpose.

14.03 PERMITTING PROCEDURES

14.03.01 Express Written Approval of the Tribe

When this Ordinance requires a person to receive the express written approval of the Tribe, the person seeking permission to engage in the activity shall seek said permission as follows:

- (a) The person shall provide a copy of a written request to the Tribal Council, the Natural Resources Department and the Environmental Committee.

- (b) The request shall contain:
 - (i) The name and address of the person seeking approval;
 - (ii) A detailed description of the activity including the time and place which the activity will occur;
 - (iii) A detailed description of the actual and/or potential damage to the environment resulting directly or indirectly from the activity; and
 - (iv) A description of the efforts that will be made to mitigate damage to the environment.

- (c) The Natural Resources Department and the Environmental Committee shall provide the Tribal Council with a recommendation as to whether the request should be granted. The recommendation shall include all information the Committee has considered in making its recommendation.

- (d) The Tribal Council shall review the request, the recommendations from the Natural Resources Department and the Environmental Committee and determine if there is sufficient information on which to base a decision.

- (e) The Tribal Council may grant the request, deny the request or require that the applicant provide additional information.

- (f) The Tribal Council decision shall be final.

14.03.02 Permits Issued by Environmental Committee or Natural Resources Department

When this Ordinance requires a person to receive a permit from the Environmental Committee or the Natural Resources Department:

- (a) The person shall provide a written application for a permit to the appropriate permitting authority. In the event that this ordinance requires a permit from the Environmental Committee and the Environmental Committee has been dissolved, the person shall seek said permit from the Natural Resources Department.
- (b) The application shall contain:
 - (i) The name and address of the person seeking a permit;
 - (ii) A detailed description of the activity including the time and place which the activity will occur;
 - (iii) A detailed description of the actual and/or potential damage to the environment resulting directly or indirectly from the activity; and
 - (iv) A description of the efforts that will be made to mitigate damage to the environment.
- (c) If the permitting authority determines that the activity will have no significant impact on the environment, it shall issue a permit.
- (d) If the permitting authority determines that the activity has the potential to significantly impact the environment, it shall forward the application along with its recommendation to the Tribal Council who shall then make the decision as to whether the permit should be issued.
- (e) Any person denied a permit by a permitting authority may appeal the decision to the Tribal Council.
- (f) The decision of the Tribal Council shall be final.

14.03.03 “Significantly Affecting the Environment”

The determination of whether an activity will significantly affect the environment shall be made in the context of Nisqually Tribal culture and values. Factors to be taken into consideration in evaluating a request or application for significant effects on the environment include:

- (a) Whether the activity will adversely affect the quantity and quality of the fish and shellfish resources of the Tribe;
- (b) Whether the activity will adversely affect wildlife and other natural resources of the Tribe including water quality and quantity;
- (c) Unique or sensitive characteristics of the geographic or hydrologic area in which the activity will take place;
- (d) Whether the activity may adversely affect an endangered or threatened species or its habitat;
- (e) Whether the activity may cause loss or destruction of cultural, historical or scientific resources;
- (f) Whether the activity affects the health and safety of the Nisqually Tribal community;
- (g) Whether the effects of the activity are uncertain or involve unique or unknown risks;
- (h) Whether the activity may establish a precedent for future actions with significant effects;
- (i) The level of Tribal community support or opposition;
- (j) Whether the activity is related to other actions with individually insignificant but cumulatively significant impacts. If it is reasonable to anticipate a cumulatively significant impact on the environment, the activity is significant.
- (k) Whether the activity threatens a violation of federal, state, or local law or requirement or interlocal cooperation agreement to which the Nisqually Tribe is a party, imposed for the protection of the environment.
- (l) Whether the activity would violate the Constitution of the Nisqually Indian Tribe or any other law or policy of the Tribe.

14.04 CLASSIFICATION OF PENALTIES

14.04.01 Classification of Penalties

Infractions under this Chapter shall carry the penalties set forth in this section:

Class A: A fine not less than \$500 but not to exceed \$5,000.

Class B: A fine not to exceed \$5,000.

Class C: A fine not to exceed \$1,000.

14.05 CULTURAL RESOURCES

14.05.01 Notification of Tribal Council

Any person who fails to notify the Tribal Council and the Nisqually Historical Committee when a cultural resource has been located or unearthed has committed a class C infraction.

14.05.02 Failure to Halt Construction

Any person who fails to halt construction on any site where a cultural resource has been located or unearthed has committed a class B infraction.

14.05.03 Digging/Excavation/Removal

No person shall, without the express written approval of the Tribal Council, remove any artifacts or any other materials, including soil, sand and gravel, from a cultural resource. Any person who removes or allows the removal of artifacts or any other materials from a cultural resource without the express written approval of the Tribal Council has committed a class A infraction.

14.05.04 Destruction of Cultural Resource

Any person who injures, defaces or destroys any cultural resource has committed a class A infraction.

14.06 EXCAVATION/DREDGING/FILLING

14.06.01 Waters/Wetlands/Shorelines

No person shall excavate, dredge, fill, drain or alter the watercourse of any waters, wetlands or shorelines, of the Tribe without the express written approval of the Tribal Council and all permits required by federal law.

Any person who excavates, dredges, fills, drains or alters the watercourse of any waters, wetlands or shorelines, of the Tribe without the express written approval of the Tribal Council and/or without any permit required by the federal government has committed a class A infraction.

14.06.02 Tribal Lands

No person shall excavate, mine, drain, build roads or engage in any other earth removal or disposition project on Tribal lands without the express written approval of the Tribal Council and all permits required by federal law.

Any person who excavates, mines, drains, builds roads or engages in any other earth removal or disposition project on Tribal lands without the express written approval of the Tribal Council and/or without any permit required by the federal government has committed a class A infraction.

Excavation and earth removal in any cemetery for burial purposes are exempt from this subsection.

14.06.03 Steep Slopes

No person shall develop or excavate on any slope exceeding 30% without the express written approval of the Tribal Council and certification in writing from a licensed Professional Engineer that all reasonable precautions have been taken to ensure foundation stability and the prevention of mass soil movement or soil erosion.

Any person who develops or excavates on any slope exceeding 30% without the express written approval of the Tribal Council and/or without the required certification from a licensed Professional Engineer has committed a class A infraction.

14.06.04 Use of Fill Material

Any person who uses fill material to accommodate any development activity without certification from a licensed Professional Engineer that such fill will not alter or prohibit the natural flow of surface or ground water has committed a class A infraction.

14.06.05 Earth or Construction Debris

- (a) Any person who allows earth or construction debris to enter waters, wetlands or tidelands of the Tribe, or any waters of the United States, has committed a class A infraction.
- (b) Any person who buries or disposes of construction debris at any place other than an approved off-site station or landfill has committed a class A infraction.

14.06.10 Groundwater Access

- (a) No person, organization or group, including the Nisqually Indian Tribe (or its licensees, contractors, joint venturers, partners, corporations, sub-corporations or other agents) shall access or caused to be accessed groundwaters below twenty-five feet (as measured from the ground surface where such access is made) from “bluffline to bluffline” of the Nisqually River within the Nisqually reservation. (Development and operation of Tribal hatchery wells within the “bluffline to bluffline” area are exempt from this prohibition).
- (b) Emergency wells may be permitted within the “bluffline to bluffline” area if the Tribal Council determines a water emergency based on specific findings for such an emergency. Emergency wells shall be capped after six months use.
- (c) A violation of this provision shall be a class A infraction. Any groundwater access in violation of this provision shall be physically terminated in an approved manner acceptable to the Tribe at the violator’s sole expense.

HISTORICAL AND STATUTORY NOTES

This section enacted by Tribal Council Resolution 124-08 adopted on November 4, 2008.

14.07 FIRES

14.07.01 Burning Prohibited Substances

Any person who sets on fire, or willfully, or as the result of negligence, allows to be burned, any dead animals, asphalt, petroleum products, paints, rubber products, plastics or any substance other than paper or natural vegetation on any lands of the Tribe has committed a class B infraction.

Fires set for religious or cultural purposes are exempt from this subsection.

14.07.02 Burning Without a Permit

Any person who sets, or willfully, or as the result of negligence, allows to be burned, any fire, without a permit from the Planning Department has committed a class B infraction.

The following activities are exempted from this provision provided that only one fire is burned at a time and that the burning does not take place on the tidelands:

- (a) Fires consisting solely of charcoal, propane, natural gas or wood used solely for the preparation of food;
- (b) Fires for religious or cultural ceremonies;
- (c) Fires no larger than four feet in diameter and three feet in height for campfires in designated fire pits; and,
- (d) Fires containing only paper, untreated timber, leaves, clippings, prunings or other gardening refuse which:
 - (i) Are no larger than four feet in diameter and three feet in height or are contained in a barrel used for burning;
 - (ii) Are burned during daylight hours, during periods of calm to very light winds;
 - (iii) Are burned on bare soil, green grass or other similar areas free of combustible material; and,
 - (iv) Are burned by a person in his or her own yard and may be reached by a garden hose.

14.07.03 Burning on Shorelines

Any person who sets, or willfully, or as the result of negligence, allows to be burned, any fire upon the shorelines has committed a class B infraction.

Fires used for Tribal member fishing are exempted from this provision provided that they are no larger than four feet in diameter and three feet in height.

14.07.04 Leaving a Fire Unattended

Any person who sets, or allows to be set, any fire and then leaves the fire, unattended by a person capable of extinguishing the fire, has committed a class C infraction.

14.07.05 Burning During Air Pollution Episode

Any person who sets, or willfully, or as the result of negligence, allows to be burned, any fire, during any time period established by the Tribe or other agency, including Thurston County, as an air pollution episode or period of impaired air quality has committed a class B infraction.

Fires set for religious or cultural purposes are exempt from this subsection. Burning during an air pollution episode is also exempt from this subsection if it occurs for heating purposes and is the person's only source of heat.

14.07.06 Burning at Location Designated a Fire Hazard

Any person who sets, or willfully, or as the result of negligence, allows to be burned, any fire, at any location or during any time that the Tribe has designated a fire hazard because of dry conditions or other emergency situations requiring no outdoor burning has committed a class B infraction.

14.07.07 Failure to Report

Any person who knows that a fire is endangering life or property and fails to give prompt report to Tribal law enforcement has committed a class B infraction.

14.07.08 Failure to Control

Any person who knows that a fire is endangering life or property and fails to take reasonable measure to put out or control the fire if he knows he is under an official, contractual, or other legal duty to prevent or combat the fire, or if the fire was started, lawfully or unlawfully, by him or with his assent, or on property in his custody or control, has committed a class B infraction.

14.08 LIVESTOCK

14.08.01 Pasturing Livestock within Buffer Zone

Any person who pastures, or willfully, or as the result of negligence, allows to be pastured, any livestock on or within any buffer zone has committed a class B infraction.

14.09 MOTORIZED VEHICLES

14.09.01 Unauthorized Use of Motor Vehicles

Any person who operates, parks or allows the operation or parking of any motor vehicle upon Tribal lands except upon roads, trails, or parking areas specifically designated by the Tribe as allowing such operation or parking has committed a class C infraction.

14.09.02 Abandoned Vehicles

Any person who abandons a vehicle on or within Tribal lands or water has committed a class C infraction.

A vehicle shall be considered abandoned by its registered owner if it has been left in a location other than the owner's driveway for a period of two weeks or longer.

14.10 PESTICIDES

14.10.01 Pesticide Application

Any person who applies, or allows to be applied to any lands or waters of the Tribe any rodenticide, insecticide, herbicide, fungicide, algaecide, or any other pesticides no matter the application procedure without a permit from the Environmental Committee has committed a class B infraction.

The household use of pesticides is exempted from this subsection provided that they are applied according to label restrictions and are applied with best management practices.

14.10.02 Application within Buffer Zone

Any person who applies, or allows to be applied any rodenticide, insecticide, herbicide, fungicide, algaecide or any other pesticides no matter the application procedure, on or within any buffer zone has committed a class B infraction.

14.10.03 Pesticide Storage

Any person who possesses any rodenticide, insecticide, herbicide, fungicide, algaecide or any other pesticides and who negligently fails to store such pesticide in such a manner so as to prevent it from spilling, spreading or being ingested by any person or animal has committed a class B infraction.

14.11 SEWAGE DISPOSAL

14.11.01 Failure to Connect to Sewage System

Any person who owns or is legally responsible for a residence, place of business or other building where persons congregate, reside or are employed who does not have the structure connected to either an on-site sewage system or a public sewage system has committed a Class B infraction.

14.11.02 Discharging Sewage to Water or upon the Ground

Any person who owns or is legally responsible for a residence, place of business or other building where persons congregate, reside or are employed who allows sewage generated from the use of said structure to be discharged to surface water, ground water, or upon the surface of the ground has committed a Class B infraction.

14.11.03 Failure to Pump On-site Sewage System

Any person who owns or is legally responsible for the maintenance of an on-site sewage system who fails to pump the septic system once every five years has committed a class C infraction.

14.11.04 Failure to Repair On-site Sewage System

Any person who owns or is legally responsible for the maintenance of an on-site sewage system, who knows, or, in the exercise of due diligence, should have known, that the on-site sewage system is failing to function properly and fails to promptly repair any leak, breakage or damage to the on-site sewage system has committed a class B infraction.

14.11.05 Failure to Comply with Federal Requirement

- (a) Any person who owns or is legally responsible for a residence, place of business or other building where persons congregate, reside or are employed who fails to comply with all federal requirements relating to sewage and/or wastewater disposal has committed a class B infraction.
- (b) Any person who constructs, or allows to be constructed, an on-site sewage system which does not comply with applicable federal standards has committed a class B infraction.

14.11.06 Construction of On-site Sewage System within Buffer Zone

Any person who constructs, or maintains an on-site sewage system on or within any buffer zone has committed a class A infraction.

14.12 SPILLS

14.12.01 Spill of Hazardous Substance or Toxic Pollutant

Any person engaged in any operation or activity which results in a spill, discharge, or release of any hazardous substance or toxic pollutant onto the lands or waters of the Tribe, or the waters of the United States, or within any building wherein persons may be exposed to such substance or toxic pollutant, has committed a class A infraction.

14.12.02 Spill of Pollutant

Any person engaged in any operation or activity which results in a spill, discharge, or release of any pollutant onto the lands or waters of the Tribe, or the waters of the United States, has committed a class B infraction.

14.12.03 Failure to Notify

Any person engaged in any operation or activity which results in a spill, discharge, or release of any substance which may cause pollution of the lands or waters of the Tribe, or the waters of the United States, who fails to notify the Natural Resources Department Director or his or her designee as soon as reasonably possible has committed a class B infraction.

14.12.04 Reparation

Any person engaged in any operation or activity which results in a spill, discharge, or release of any substance which may cause pollution of the lands or waters of the Tribe, or the waters of the United States, who fails to clean up the spilled substance and/or repair the damage caused by the spill as quickly as reasonably possible and using the best available technology has committed a class B infraction.

14.12.05 Negligence

Any person who negligently conducts any operation or activity which results in a spill, discharge, or release of any substance which may cause pollution of the lands and waters of the Tribe, or the waters of the United States, has committed a class B infraction.

14.12.06 Willful Misconduct/Reckless Disregard

Any person who, through willful misconduct, or as a result of reckless disregard, conducts any operation or activity which results in a spill, discharge, or release of any substance which may cause pollution of the lands and waters of the Tribe, or the waters of the United States, has committed a class A infraction.

14.13 TRIBAL RESOURCES

14.13.01 Vandalism/Destruction of Lands

It is the policy of the Tribe to maintain the natural beauty of the rocks, cliffs and other objects of nature on Tribal lands.

Any person who defaces or destroys the natural beauty of the rocks, cliffs or other objects of nature upon or within the lands of the Tribe has committed a class B infraction.

14.13.02 Unauthorized Use of Lands

No person, other than members of the Nisqually Indian Tribe, shall go upon Tribal land for the purpose of collecting driftwood, plant life, forest products, souvenirs, sand or gravel.

Anyone not a member of the Nisqually Indian Tribe who goes upon the lands of the Tribe for the purpose of collecting artifacts, driftwood, plant life, forest products, souvenirs, sand or gravel has committed a class B infraction. Such person shall also be deemed guilty of trespass and may be prosecuted under the appropriate federal statute.

14.13.03 Unauthorized Removal of Tribal Resources

No person, other than members of the Nisqually Indian Tribe, shall remove any sands, rock, mineral, plant life, marine growth, driftwood, souvenirs or other product of the land.

Any non-Tribal member who takes from the lands of the Tribe any sands, rock, mineral, plant life, marine growth, driftwood, souvenirs or other product of the land has committed a class B infraction.

14.13.04 Unauthorized Access to Water

Anyone not a member of the Nisqually Indian Tribe who goes upon Tribal lands for the purpose of tying boats or rafts, building boat ramps, or other structures, or to use the lands for access to the water, or for any other reason has committed a class B infraction. Such person shall also be deemed guilty of trespass and may be prosecuted under the appropriate federal statute.

14.13.05 Depletion of Tribal Water Resources

Any person who willfully or as a result of negligence allows a Tribal water resource to be depleted without the express written approval of the Nisqually Utilities Committee has committed a class A infraction.

Use of water in conformance with the requirements of the Nisqually Public Utilities Ordinance shall not be considered a depletion of Tribal water.

14.13.06 Introduction of Fish or Aquatic Organisms

Any person who introduces, or willfully, or as the result of negligence, allows to be introduced any non-native fish or other aquatic organisms, or the body parts of such fish or other organisms into the waters, wetlands, or marshes of the Tribe or into the waters of the United States, without the express written approval of the Nisqually Natural Resource Department, has committed a class B infraction.

14.13.07 Forfeiture of Illegally Possessed Resources

Any sands, rock, mineral, marine growth, driftwood, wildlife, game, fish, shellfish, forest products, or souvenirs or other product of the land which has been obtained in violation of this ordinance shall be forfeited to the Tribe and may be seized by the Tribal law enforcement authorities. No property rights shall exist in any resource which is possessed in violation of this ordinance.

14.13.10 Trespass by Non-Indians

Any non-Indian who shall willfully enter upon the lands or premises of the Nisqually Indian Tribe and its community members, without lawful authority, after having been forbidden to do so by the owner or occupant, or after being asked to leave, refuses to do so, is in trespass and shall be fined in accordance with a Class C penalty as defined in this Title.

HISTORICAL AND STATUTORY NOTES

This section created by Tribal Council Resolution 49-2005 dated September 20, 2005.

14.14 WASTE DISPOSAL/DUMPING

14.14.01 Toxic or Hazardous Substances

Any person who disposes of, or causes to be released, any toxic pollutant, radioactive waste or other hazardous substance on or within any Tribal land or Tribal water, or within any building wherein persons may be exposed to such substance or toxic pollutant, has committed a class A infraction.

14.14.02 Pollutants

No person shall dispose of or cause to be released any pollutant on or within any Tribal land or water without the express written approval of the Tribal Council.

Any person who disposes of, or causes to be released any pollutant on or within any Tribal land or water without the express written approval of the Tribal Council has committed a class B infraction.

14.14.03 Littering

Any person who intentionally places, throws, deposits or otherwise disposes of any rubbish, trash, cars, tires, household appliances, or other garbage anywhere other than in containers or areas designated for disposal of such items, within any Tribal land or Tribal water has committed a class B infraction.

A presumption that a person has littered is created when three pieces of litter identifying the person are found at the site where the litter has been left.

14.15 WOOD CUTTING

14.15.01 Cutting, Removing or Selling Timber without a Permit

No person shall cut, remove or sell any standing timber without a permit from the Natural Resources Department and all other permits required by federal law. A permit from the Natural Resources Department shall not be required if the timber poses a danger, is blocking walkways or roadways, or is on property owned by the person.

Any person who cuts, removes or sells any standing timber without the required permit(s) has committed a class B infraction.

14.15.02 Cutting, Removing or Selling Firewood

Firewood cutting shall be limited to the cutting of dead, downed trees. No person shall cut, remove or sell any firewood without a permit from the Nisqually Natural Resources Department unless such wood poses a danger, is blocking walkways or roadways or is on property owned by the person.

Any person who cuts firewood without the required permit has committed a class B infraction.

14.15.03 Cutting Wood in Sensitive Areas

Any person who cuts any standing or fallen trees in a sensitive area as defined by this ordinance without the express written approval of the Tribal Council has committed a class B infraction.

14.15.04 Forfeiture of Illegally Possessed Wood

Any standing or downed timber or driftwood which has been cut, sold, or removed from any lands of the Tribe without a permit, or in violation of the terms of a permit from the Tribe, shall be forfeited to the Tribe and may be seized by the Tribal law enforcement authorities. No property rights shall exist in any wood which is possessed in violation of this ordinance.

14.16 ENFORCEMENT PROCEDURES

14.16.01 Who May Enforce

The provisions of this ordinance shall be enforced by Tribal law enforcement officers, other authorized law enforcement officers or by other persons or groups designated by the Tribe.

Off-duty Tribal law enforcement officers are authorized to enforce any provisions of this ordinance.

14.16.02 Duty to Report/Abate Danger

Any person witnessing a violation of this ordinance which has the potential to endanger the health or safety of any person has a duty to report such violation to Tribal law enforcement officers or any other designated Tribal official. When such a report has been made, law enforcement shall take action to abate the danger as quickly as reasonably possible. Abating the danger to the community shall take priority over any other law enforcement action, including gathering evidence for the prosecution of a criminal offense.

14.16.03 Power of Enforcement

Any person authorized to enforce this ordinance shall issue a notice of violation:

- (a) When it occurs in the enforcement authorities' presence; or,
- (b) When the enforcement authority investigating a report of an infraction finds probable cause to believe that a violation of this ordinance has been committed.

14.16.04 Searches with a Warrant

The Tribal Court may issue a warrant and direct a search to be made in any place or premises wherein it is alleged that any items taken contrary to this ordinance are concealed or kept. Such warrant shall be issued pursuant to the rules of criminal procedure for the Nisqually Tribal Court.

14.16.05 Seizure of Items Taken or Used in Violation of this Ordinance

- (a) Upon issuance of a citation, the enforcement authority may seize all items which he or she has probable cause to believe have been taken by the alleged violator contrary to the provisions of this Chapter.
- (b) An enforcement authority may, in addition, seize any litter, pesticide, pollutant, or toxic or hazardous substance which he or she has reasonable grounds to believe have been used, disposed of, or released in violation of this Chapter.
- (c) An enforcement authority who has seized any item pursuant to this section shall prepare a written inventory of all items seized which shall be signed by the enforcement authority and the alleged violator. A copy of the inventory shall be given to the alleged violator, and another copy filed with the Tribal Court.

- (d) The arresting officer shall, as soon as possible, sell all perishable items having market value which have been seized from the alleged violator. The perishable items shall be sold at the nearest market at the then prevailing price at the market selected. All proceeds from the sale shall be immediately deposited in a special account at the Tribal Office. The alleged violator shall receive a copy of the sales receipt. The proceeds from the sale of seized perishable items shall be held until disposed of pursuant to order of the Tribal Court.
- (e) All items, other than perishable items, seized pursuant to this section shall, as soon as practicable, be brought to the Tribal Office or other place designated by the Nisqually Indian Tribe for the storage of seized property. Seized property shall be stored in such a manner as to minimize further damage to it and shall be held at the owner's risk until returned or sold as provided in subsection 14.18.05.

14.16.06 Notice of Violation

The Tribe through its enforcement authorities shall give a written notice to any violators of this Chapter. The notice of violation shall:

- (a) Specify the nature of the violation, the location of the violation, and the section(s) of this ordinance being violated;
- (b) Set a date for hearing before the Tribal Court which shall be no sooner than ten (10) days after service of the notice;
- (c) Notify the violator that if the violator does not appear before the Tribal Court on the date set for hearing, the court may declare the defendant to be in default and award any appropriate relief to the complainant as provided by this ordinance.

14.16.07 Person Receiving Notice – Identification and Detention

- (a) A person who is to receive a notice of violation under subsection 14.16.06 is required to produce reasonable identification, including a driver's license or indenticard.
- (b) A person who is unable or unwilling to reasonably identify himself or herself to an enforcement authority may be detained for a period of time no longer than is reasonably necessary to identify the person for purposes of issuing a notice of violation.

14.16.08 Service of Notice

The notice of violation shall be served upon the defendant in the following manner:

- (a) By delivering a copy personally to the defendant or the defendant's authorized representative, or to any member of the defendant's family residing with the defendant who is eighteen (18) years of age or older; or,
- (b) By delivering a copy to the defendant's place of business and leaving it with a secretary or other person authorized to accept service.
- (c) If, after reasonable effort is made, the defendant can not be personally served, service may be made by sending a copy of the notice to the defendant's last known address by certified mail, return receipt requested, and sending an additional copy by regular mail.

An affidavit of service filed with the Tribal Court shall constitute proof of service of the notice of violation. If service is made in the manner described in subsection (c), the affidavit must describe the efforts that were made to personally serve the defendant.

14.16.09 Cease and Desist Orders

- (a) If the Tribe or its authorized representative determines, with or without a hearing, that there exists a violation of any provision of this ordinance, the Tribe may issue a cease and desist order. Such order shall set forth the provision alleged to be violated, the facts alleged to constitute the violation, and the time by which acts or practices complained of must be terminated.
- (b) The order shall be served in the manner provided in subsection 14.16.08.
- (c) A Cease and Desist Order does not preclude the Tribe from seeking civil penalties and/or damages.

14.16.10 Clean-up Orders

- (a) The Tribe or its authorized representative may issue orders to any person to clean up any hazardous or toxic substance, pollutant, refuse or garbage which he, or his employee, or his agent has accidentally or purposely dumped, spilled, or otherwise deposited in, on or within any lands, wetlands, tidelands, or waters within the jurisdiction of the Tribe. A Clean-up Order may require that the best available technology be used to restore the polluted area as near as possible to its original condition.
- (b) The order shall be served in the manner provided in subsection 14.16.08.
- (c) A Clean-up Order does not preclude the Tribe from conducting its own clean-up activities, seeking civil penalties and/or seeking damages.

14.16.11 Request for Court Order

In the event any person fails to comply with a cease and desist or clean-up order that has not been temporarily suspended pending administrative or judicial review, the Tribe may request the tribal prosecutor to bring, and if so requested it shall be his duty to bring, an action in Tribal Court for a temporary restraining order, or a preliminary or permanent injunction to prevent any further or continued violation of such order. The Tribe may also request a court order prohibiting the person from obtaining any further permits or licenses issued by the Tribe.

14.16.12 Appeal of Cease and Desist Order or Clean-up Order

Any Cease and Desist Order or Clean-up Order may be appealed to the Tribal Court. The appealing party shall serve a notice of the hearing on the party who issued the order in the manner provided in subsection 14.16.08.

14.17 COURT PROCEDURES

14.17.01 Rights of Parties

Any party to a hearing held pursuant to this ordinance has the following rights:

- (a) The right to be represented by counsel, but at his or her own expense;
- (b) The opportunity to subpoena witnesses;
- (c) The opportunity to introduce, examine and cross-examine witnesses;
- (d) The opportunity to discover, offer and inspect evidence; and,
- (e) The opportunity to explain any mitigating circumstances surrounding the violation.

14.17.02 No Right to Jury Trial

There is no right to a jury trial in proceedings held pursuant to this Chapter. Such proceedings shall be heard by the Court without a jury.

14.17.03 Hearing

After consideration of the evidence and arguments presented, the Court shall determine whether or not a violation of this ordinance has been committed. If the Court has established, by a preponderance of the evidence, that a violation has been committed, the Court shall enter an order accordingly. If the Court does not establish that a violation of this Chapter has been committed it may overturn any cease and desist orders, clean-up orders, restraining orders or injunctions that have been issued.

14.17.04 Appeals

Any party may appeal any final order made by the Court pursuant to this ordinance. All appeals shall be governed by the rules for appeal in other civil cases.

14.18 POWER OF THE COURT

14.18.01 Power of the Court – Generally

If the Court finds by a preponderance of the evidence that a violation of this ordinance has been committed, it may require the violator to pay a civil penalty in an amount not to exceed the maximum penalty allowed for the infraction. It may also order any other remedies provided for by this ordinance.

14.18.02 Guideline for Assessing Penalties

Factors the Court should take into consideration when determining the appropriate civil penalty for a violator of this ordinance are:

- (a) Whether the violator has previously appeared before the Court because of a violation of this ordinance;
- (b) Whether the violator has established a pattern of repeated violations of this ordinance;
- (c) Whether the violator has committed similar environmental violations in other jurisdictions;
- (d) Whether the violator has attempted to repair the damage caused by the violation;
- (e) The extent of the violator's resources and the needs of his or her dependents, if any;
- (f) The extent to which the violation has damaged the environmental or cultural resources of the Tribe and the extent to which such damage may be repaired;

- (g) Whether natural or cultural resources damaged by the violator are irreplaceable.

14.18.03 Continuing Violations

Any violation which continues for more than one day will be considered a continuing violation. A separate violation is deemed to have occurred and a separate penalty may be assessed for each day in which the violation continues.

14.18.04 Community Service

Upon a showing of financial hardship, the court may sentence a violator to perform community service hours in lieu of payment of a fine imposed. Each hour of community service shall reduce the fine by the amount of federal minimum wage at the time of sentencing. Adequate supervision must be available before community service hours are imposed.

14.18.05 Disposition of Seized Property

- (a) The Court shall determine the disposition of property seized under subsection 14.16.05 at the hearing held on the notice of violation.
- (b) If the Court determines that the owner of the seized property did not violate the provisions of this Chapter, the Court shall order the property, and/or the proceeds from the sale of perishables returned to the person from whom it was seized.
- (c) If the Court finds that a violation of this Chapter has been committed, the Court may order that any seized property lawfully owned by the alleged violator, or any proceeds therefrom, remain in the possession of the Nisqually Indian Tribe until the violator has paid the penalty assessed. If the violator does not pay the penalty within thirty (30) days, the Tribe may hold an auction for the purpose of selling the property. Notice of the auction must be posted at the Tribal Center and mailed to the violator at the violator's last known address at least ten (10) days prior to the auction.
- (d) Proceeds from an auction held pursuant to subsection (3) shall be disbursed in the following order:
 - (i) To pay the costs associated with the auction;
 - (ii) To be applied to the penalty owed to the Tribe as the result of the violation;
 - (iii) Any remaining moneys shall be held for the benefit of the violator for a period of six (6) months, after which they shall become the property of the Tribe.
- (e) All items taken by the alleged violator contrary to the provisions of this ordinance, or any proceeds therefrom, shall become the property of the Tribe.

14.18.06 Restraining Orders and Injunctions

- (a) In addition to any civil penalty imposed, the Court may also issue a temporary restraining order, preliminary injunction, or permanent injunction to prevent any further or continued violation of this ordinance.
- (b) Any violation of a restraining order or injunction shall be in addition to said above penalties and subject to punishment for failure to comply.

14.18.07 Penalties for Failure to Comply

Any person who violates any provision of any permit issued by the Tribe or fails to comply with any temporary restraining order, preliminary injunction, or permanent injunction issued by the Tribal Court or any final cease and desist order or clean-up order issued by the Tribe shall be subject to a civil penalty of not more than five thousand dollars (\$5,000) per day for each day during which such violation occurs. Said penalty shall be in addition to any penalty assessed for the underlying infraction.

14.18.08 Costs of Clean-Up/Actual Damages

In addition to the civil penalties imposed in this ordinance, any person who commits an environmental infraction must:

- (a) Pay the cost of any necessary clean-up, restoration or reclamation caused by the violation, as ordered by the Tribal Court or by any administrative body with jurisdiction; and
- (b) Pay any actual damages for injury to property, life or resources of any person, corporation, public body or Tribal entity.

14.18.09 Joint and Several Liability

If more than one person is found by the Court to have contributed to a violation of this ordinance which has resulted in damages or which requires clean-up, restoration or reclamation, such persons shall be jointly and severally liable for such damages, clean-up, restoration or reclamation and shall have a cause of action for contribution from the other responsible parties.

14.18.10 Attorney's Fees and Costs

In addition to the civil penalties imposed by this ordinance, the Court may order any violator to pay the attorney's fees and costs incurred by the Tribe in enforcing the ordinance.

TITLE 14 – ENVIRONMENT AND NATURAL RESOURCES

CHAPTER II – FISHING

14.19 GENERAL PROVISIONS

14.19.01 Intent

This Chapter shall establish the general provisions governing the exercise of fishing rights reserved by and secured to the Nisqually Indian Tribe by the Treaty of Medicine Creek.

HISTORICAL AND STATUTORY NOTES

1. This section amended in 1991. Originally created by Ordinance 1-1981.
2. The word “subchapter” changed to “chapter” throughout this Title during 2009 formatting changes.

14.19.02 Exercise of Fishing Rights

No person shall exercise or assist in the exercise of any fishing right reserved by or secured to the Nisqually Indian Tribe except in accordance with this Chapter and Annual Regulations hereafter approved by the Nisqually Tribal Business Committee and Emergency Regulations adopted by the Nisqually Fish Commission.

HISTORICAL AND STATUTORY NOTES

This section amended in 1991. Originally created by Ordinance 1-1981.

14.19.03 Definition

For the purpose of this Chapter:

- (a) “Exercise or assist in the exercise of any fishing right” means to handle or operate any boat or other vessel used in fishing, to handle or operate any net, device used in the operation of any net, or any other gear used in fishing; or to use a treaty fisherman or other Indian identification card in fishing or in the sale, trading or peddling of fish.
- (b) “Enrolled members of the Nisqually Indian Tribe” means those persons whose names appear on the membership roll of the Nisqually Indian Community as approved by the Secretary of the Interior or his or her designee.
- (c) An “authorized assistant” means any person who:
 - (i) Is the spouse of an enrolled member of the Nisqually Indian Tribe; or

- (ii) Is a treaty Indian of the Nisqually Indian Tribe or another treaty tribe with fishing rights in the same usual and accustomed places.
- (d) “Spouse” means one’s marriage partner: a husband or wife.

HISTORICAL AND STATUTORY NOTES

This section amended in 1991. Originally created by Ordinance 1-1981.

14.19.04 Presumption

For the purposes of enforcement of this Chapter, any person fishing or assisting in fishing in an area open only to tribal fishermen, or with nets or other gear available only to tribal fishermen, or with a boat plaque or identification card bearing numbers that are or appear to be assigned to the Nisqually Indian Tribe or its members shall be presumed to be “exercising or assisting in the exercise of a fishing right” reserved or secured to the Nisqually Indian Tribe.

HISTORICAL AND STATUTORY NOTES

This section amended in 1991. Originally created by Ordinance 1-1981.

14.19.05 Violation of Regulations

For the purposes of enforcement of this Chapter, violation of any provision of the Annual Fishing Regulations, Emergency Regulations or Sportfishing Regulations shall be considered a violation of this Chapter. Until provided otherwise by this Code, violation of any provision of the Annual or Emergency Hunting Regulations and the Annual or Emergency Shellfish Regulations shall be considered a violation of this Chapter.

HISTORICAL AND STATUTORY NOTES

1. This section amended by Resolution 59-2012 dated June 5, 2012.
2. This section amended in 1991. Originally created by Ordinance 1-1981.

14.19.06 Jurisdiction

- (a) The jurisdiction of the Nisqually Indian Tribe shall extend to all usual and accustomed fishing areas reserved by and secured to the Nisqually Nation by the Treaty of Medicine Creek.
- (b) Within the exterior boundaries of the Nisqually Indian Reservation, the Nisqually Indian Tribe shall retain the exclusive right to the fishery resource; regulation and control of all fish habitat; and exclusive jurisdiction over all individuals, agencies and entities in all fishery-related activities.
- (c) Within those usual and accustomed fishing areas outside the exterior boundaries of the Nisqually Indian Reservation, the Nisqually Indian Tribe shall exercise

jurisdiction over all members of the Nisqually Indian Tribe and over all persons operating or purporting to operate under Tribal authority in the taking of fish.

- (d) Concurrent jurisdiction shall be exercised in those areas recognized as the usual and accustomed fishing areas of the Nisqually Indian Tribe as well as of other tribes having established treaty reserved rights. Cross deputization of tribal law enforcement officers between Medicine Creek Treaty Tribes or with State or Federal law enforcement agencies may be effected upon agreement of the participating governing bodies.
- (e) General restrictions of the contents of this Section to identifiable areas are not to be construed as a relinquishment of the right of the Nisqually Indian Tribe to pursue its treaty protected fishing rights now or in the future in all usual and accustomed areas.

HISTORICAL AND STATUTORY NOTES

This section amended in 1991. Originally created by Ordinance 1-1981.

14.20 RIGHT TO FISH

14.20.01 Who May Exercise the Tribal Right to Fish

- (a) The Nisqually Indian Tribe's right to fish in its usual and accustomed fishing places may be exercised by enrolled members or their authorized assistants, fishing in accordance with the provisions of this Section and any regulations adopted in accordance with this Section.
- (b) An enrolled member of the Nisqually Indian Tribe may be assisted in the exercise of Nisqually Tribal fishing rights by an "authorized assistant" as provided under the rulings of the Courts in United States v. Washington, 384 F. Supp 312 at 412 (W.D. Wash. 1974), affirmed 520 F. 2d 676 (C.A. 9 1975) cert. denied 423 U.S. 1086 (1976).
 - (i) No enrolled member may be assisted by more than one authorized assistant during any fishing season.
 - (ii) An authorized assistant may assist only one enrolled member during any fishing season.
- (c) Within the boundaries of the Nisqually Indian Reservation enrolled members shall have the exclusive right to fish except as herein provided:
 - (i) An enrolled member may secure the assistance of his or her spouse. Such spouse may fish for the enrolled member without the enrolled member present on the boat.

- (ii) An enrolled member may not be assisted by anyone other than his or her spouse while fishing within the exterior boundaries of the Nisqually Reservation.
- (d) Within the Nisqually Tribe’s off-reservation usual and accustomed fishing places, enrolled members of the Nisqually Tribe shall have the exclusive right to exercise Nisqually Tribal fishing rights, except as hereafter provided:
- (i) An enrolled member may secure the assistance of his or her spouse.
 - (A) For fishing places in the Nisqually River and in McAllister Creek, such spouse may fish for the enrolled member without the enrolled member present on the boat.
 - (B) For fishing in all other usual and accustomed fishing places of the Nisqually Tribe, including all marine waters, creeks, rivers or lakes (other than the Nisqually River or McAllister Creek), both the enrolled member and the spouse must be present on the boat while it is engaged in the exercise of any fishing rights of the Nisqually Indian Tribe.
 - (ii) An enrolled member may secure the assistance of an “authorized assistant” (as defined in subsection 14.19.03(c)) other than his or her spouse. Both the enrolled member and such authorized assistant must be present on the boat while it is engaged in the exercise of fishing rights of the Nisqually Indian Tribe.
 - (iii) Where an enrolled member presents a written statement showing that undue hardship would result from requiring the enrolled member and the spouse or other authorized assistant both to be on board the boat, the Nisqually Tribal Fish Commission may grant special written permission for the authorized assistant to fish without the enrolled member present on the boat. Such special permission shall be signified in writing and signed by at least three members of the Nisqually Fish Commission. The writing shall be kept with other records of tribal fishermen and authorized assistants at the tribal office and a copy shall be provided to the enrolled member. Such special permission must be for a specified time, not to exceed one year at a time.
- (e) No person shall exercise such fishing rights who is not yet eighteen (18) years of age; except as herein provided:
- (f)
- (i) An individual not yet eighteen (18) years of age may fish pursuant to this Section when the parent or guardian of said individual submits a written document to the Tribal office stating acceptance of full responsibility for the actions of individuals not yet eighteen (18) years of age.
 - (ii) An individual not yet eighteen (18) years of age shall not secure the assistance of any person other than his or her spouse in exercising treaty fishing rights.

- (f) No person shall exercise or assist in the exercise of the fishing rights reserved by or secured to the Nisqually Indian Tribe if such person has, in the same fishing year, exercised the fishing rights of another treaty tribe.
- (g) Enrolled members and authorized assistants shall use only vessels purchased or owned by Nisqually Tribal members, spouses of Nisqually Tribal members, authorized assistants, or the Nisqually Tribe, while exercising any fishing rights of the Nisqually Indian Tribe. For purposes of this Section, a lease or rental shall not be considered owned or purchased by the tribal member or authorized assistant.
- (h) By special Emergency Regulation, the Nisqually Fish Commission may permit biologists or other scientists, fishery managers or special observers on board a vessel used in a tribally authorized fishery for a designated period of time and under such terms and conditions as the Nisqually Fish Commission may specify in the Emergency Regulation.

HISTORICAL AND STATUTORY NOTES

This section amended in 1991. Originally created by Ordinance 1-1981.

14.21 IDENTIFICATION

14.21.01 Identification Cards and Boat Plaques

- (a) All fishing identification cards and boat plaques issued by the Nisqually Indian Tribe shall be the property of the Nisqually Indian Tribe. All expired fishing identification cards shall be returned to the Fisheries Secretary upon application for a new fishing identification card.
- (b) Prior to exercising their fishing rights, fishermen qualifying under subsection 14.20.01 of this Section shall annually obtain the following required fishing identification card:
 - (i) A treaty fisherman identification card issued by the Nisqually Fish Commission bearing the Bureau of Indian Affairs serial number, the picture of the enrolled member and bearing on the back an expiration date showing that said card is valid only through June 30 of the year following the date it was issued.
 - (ii) For spouses of an enrolled member, a treaty fisherman identification card issued by the Nisqually Fish Commission bearing the words “spouse card,” the Bureau Of Indian Affairs serial number of the enrolled member, a picture of the spouse, and bearing an expiration date showing that said card is valid only through June 30 of the year following the date it was issued;
 - (iii) A new treaty fisherman identification card of a new color shall be issued each year for that year’s fishing season; and

- (iv) A boat plaque issued by the Nisqually Fish Commission bearing the same Bureau of Indian Affairs serial number as is shown on the treaty fisherman identification card.
- (c) Such fishing identification card shall be in the possession of the fisherman when engaged in fishing activities, or when transporting or selling fish.
 - (i) It shall be unlawful for any treaty fisherman or authorized assistant to allow any other person to use or possess such fishing identification card or boat plaque at any time.
 - (ii) It shall be the responsibility of the Holder (enrolled member or authorized assistant) to protect the use of a fishing identification card or boat plaque. Lost or stolen documents that are required for the exercise of fishing rights must be reported immediately to the Fisheries Secretary.
- (d) If an enrolled member or authorized assistant accidentally loses his or her treaty fisherman identification card or boat plaque and reports it immediately (within seven calendar days), with an explanation of the circumstances of the loss, the enrolled member or authorized assistant may, upon payment of a fee established by the Annual Fishing Regulations have a replacement card issued by the Nisqually Fish Commission. No card may be replaced more than once each fishing season.

HISTORICAL AND STATUTORY NOTES

This section amended in 1991. Originally created by Ordinance 1-1981.

14.21.02 Issuance of Identification Cards

- (a) Tribal fishing identification cards shall be issued annually at a fee established by the Annual Fishing Regulations in accordance with the following schedule:

Enrolled Members	\$10.00 minimum
Authorized Assistants	\$10.00 minimum
Enrolled Members (Under 18)	\$10.00 minimum
Replacement Identification Card	\$20.00 minimum
Replacement Boat Plaque	\$20.00 minimum
Subsistence & Ceremonial Permit	No Charge
- (b) At least one month before the beginning of that year’s fishing season, the Tribal Fisheries Office shall give notice that Tribal fishing identification cards will be issued.
 - (i) The Notice shall include the times, place and dates where enrolled members may secure the fishing identification card.

- (ii) Such Notice shall be posted at the Nisqually Tribal Center, the Fisheries Office, and such other community locations as the tribal Fish Commission may designate.
 - (iii) Notice shall be mailed to each enrolled member eighteen (18) years of age or older at his or her last known address.
- (c) Spouses exercising the fishing rights of enrolled members shall be issued a fishing identification card with the Bureau of Indian Affairs serial number of the enrolled member.
 - (d) Enrolled individuals not yet eighteen (18) years of age who exercise fishing rights under the full responsibility of their parent or guardian shall be issued a fishing identification card with an authorization form with signatures of both parties on file in the Fisheries Office.
 - (e) Individuals exercising the fishing rights of an enrolled member by acting as an “authorized assistant” (other than a spouse) shall not be issued a tribal fishing identification card unless and until a written agreement establishing monetary benefit to the member and duration of agreement has been signed by the authorized assistant and the member and a copy provided to the tribal Fisheries Office.
 - (f) Fees collected under the schedule listed under paragraph (a) of this subsection incorporated within this Chapter shall be deposited in a properly identified account and expended for the purpose of fulfilling the requirements of this Chapter and for such other purposes as hereafter determined by the Nisqually Business Committee in concurrence with the Nisqually Fish Commission.

HISTORICAL AND STATUTORY NOTES

This section amended in 1991. Originally created by Ordinance 1-1981.

14.22 TAXES

14.22.01 Tribal Fish Tax

- (a) A tribal fish tax established in the Annual Fishing Regulations in the amount of \$0.02 minimum on each dollar is hereby imposed on the sale of all fish caught by enrolled members or authorized assistants. The annual rate of tax is to be established by the Nisqually Fish Commission and approved by the Nisqually Business Committee.
- (b) The tribal fish tax shall be collected by the licensed fish buyer buying the fish caught by the enrolled member or authorized assistant. Such fish buyer shall remit promptly (within seven calendar days) to the Nisqually Indian Tribe the amount of the tribal tax collected.

- (c) It is the responsibility of each enrolled member and authorized assistant to ensure that the amount of tribal tax collected is marked on the Treaty Indian Fish Receiving Ticket. If the amount of tribal fish tax due is not marked on the fish ticket, it shall be presumed that the fish buyer did not collect it and the amount due shall be collected by the Tribe from the fisherman. No new or replacement treaty fisherman identification card shall be issued unless and until all such taxes due and not collected by the fish buyer have been paid to the Nisqually Indian Tribe by the fisherman.
- (d) All tribal fish taxes shall be placed in a special Tribal Fish Tax Account and shall not be co-mingled with other tribal funds. Such fish tax funds shall be expended in concurrence with the Nisqually Fish Commission and approval of the Nisqually Business Committee for expenses and activities related to the Tribe's treaty fishing rights and fishery resources.

HISTORICAL AND STATUTORY NOTES

This section amended in 1991. Originally created by Ordinance 1-1981.

14.23 REGULATORY FRAMEWORK

14.23.01 Annual Fishing Regulations

- (a) The Nisqually Fish Commission shall draft Annual Fishing Regulations to be effective from July 1 of the year adopted through June 30 of the succeeding year.
- (b) A public meeting shall be held at least two weeks after notice of the proposed Annual Regulations have been mailed to each enrolled member above the age of eighteen (18) years of the Nisqually Tribe. Following the public meeting the Nisqually Fish Commission shall present the Annual Fishing Regulations to the Nisqually Business Committee for approval.
- (c) The Annual Fishing Regulations shall become effective upon approval of the Nisqually Business Committee.
- (d) A copy of the Annual Fishing Regulations shall be available to all enrolled members interested in obtaining a copy.

HISTORICAL AND STATUTORY NOTES

This section amended in 1991. Originally created by Ordinance 1-1981.

14.23.02 Emergency Fishing Regulations

- (a) Emergency Fishing Regulations shall be enacted by the Nisqually Fish Commission to provide immediate adjustments in the Annual Fishing Regulations, when needed for proper fisheries management.

- (b) Emergency Fishing Regulations shall become effective not less than twenty-four (24) hours after filing.

HISTORICAL AND STATUTORY NOTES

This section amended in 1991. Originally created by Ordinance 1-1981.

14.23.03 Nisqually Fish Commission

- (a) The Nisqually Fish Commission is comprised of five enrolled members of the Nisqually Indian Tribe and shall be elected by secret ballot election on the second Saturday of March of the year in which elections are held for officers of the Business Committee to serve for a period ending simultaneously with the election of such officers. The Business Committee shall establish by resolution, the procedure that shall be used to elect Fish Commissioners.
- (b) In the event that the Fish Commission determines by a unanimous vote of four members present that a member of the Fish Commission has, by repeated absence from Commission meetings, failed to perform his or her duties, the position shall be declared vacant and the unexpired term be filled by appointment by unanimous decision of the Fish Commission with the approval of the Nisqually Business Committee.
- (c) The duties of the Nisqually Fish Commission shall include, but not be limited to the following:
 - (i) Verify the eligibility of individuals for fishing identification cards and tribal permits pursuant to this Ordinance;
 - (ii) Assign fishing locations during the annual fishing season and during special test fisheries;
 - (iii) Draft Annual Fishing Regulations for marine and freshwater areas, subject to Business Committee approval; and, formulate and enact Emergency Fishing Regulations for the management and conservation of the fishery resource, including the achievement of tribal management objectives; and
 - (iv) Submit guidelines for grievances and disputes to be approved by the Business Committee.

HISTORICAL AND STATUTORY NOTES

1. Subsection (a) of this section was clarified by Tribal Council Resolution 8-2003, dated February 14, 2003. Resolution 8-2003 states that the Fish Commission Elections shall be held every three years in conjunction with the election of the Tribal Council chairman, Secretary and Fifth Council person.
2. Procedures for Fish Commission elections are codified in Title 13 of the Nisqually Tribal Code, Section 13.04.

3. This section amended by Community Council Resolution 5-1991, dated January 7, 1991. Originally created by Ordinance 1-1981.

14.23.04 Fishing Locations

- (a) Fishing locations shall be assigned by the Nisqually Fish Commission by the procedures formulated herein for that purpose. The general provisions governing such assignments shall be as follows:
 - (i) Fishing locations in freshwater areas shall be not less than 250 feet apart, unless otherwise agreed, but in no case shall nets be placed with the intent or effect of blocking the Nisqually River or any of its tributaries, or McAllister Creek; and
 - (ii) Fishing locations in marine beach seine areas shall not be less than 250 feet apart, unless otherwise agreed, but in no case shall nets be placed with the intent or effect of blocking the Nisqually River.
- (b) No person shall use another fisherman's location without the permission of the assignee.
- (c) All fishing locations shall be worked in a proper and efficient manner. Failure to properly fish an assigned location shall constitute an abandonment and such location shall become subject to reassignment.
- (d) In the event of the death of an assignee, preference to the assignment of the fishing location shall be given to a member of the deceased's family; provided that they qualify under this Section.
- (e) Marine fishing areas may be assigned or limited by the Nisqually Fish Commission to prevent overcrowding or otherwise to ensure proper resource management, including an adequate return to tribal river fisheries.

HISTORICAL AND STATUTORY NOTES

This section amended in 1991. Originally created by Ordinance 1-1981.

14.23.05 Fishery Records of Catch Not Sold

To enable the Nisqually Indian Community to properly manage its fishery resources, fishermen shall make available to the Fisheries Secretary all records of catch not sold to licensed fish buyers. Such catch records must include date of harvest, species, number and weight, location of catch, and whether subsistence, ceremonial or commercial.

HISTORICAL AND STATUTORY NOTES

This section amended in 1991. Originally created by Ordinance 1-1981.

14.23.06 Licensed Fish Buyers to Obtain Consent

No licensed fish buyer shall operate within the boundaries of the Nisqually Indian Reservation without the consent of the Nisqually Business Committee.

HISTORICAL AND STATUTORY NOTES

This section amended in 1991. Originally created by Ordinance 1-1981.

14.23.07 Fisheries Management Personnel

- (a) The Nisqually Indian Tribe shall employ Fisheries Management personnel to properly manage the fishery resources of the Nisqually Indian Tribe with the guidance of the Fish Commission; provided that direct supervision of their daily activities shall be in accordance with the established organization structure of the Nisqually Indian Tribe.
- (b) The Fisheries Manager shall be required to submit a quarterly report and maintain a tabulation of the fisheries harvest. Copies of the quarterly report shall be provided to each member of the Nisqually Fish Commission.

HISTORICAL AND STATUTORY NOTES

This section amended in 1991. Originally created by Ordinance 1-1981.

14.23.08 Hook-and-Line Fishing

Enrolled members may fish for any species of fish with a single hook-and-line, or “sport fish” with a single pole, within the Nisqually Tribe’s usual and accustomed fishing places, subject to such restrictions as may be imposed by the Annual Fishing Regulations or by Emergency Fishing Regulations of the Nisqually Tribe.

- (a) Any enrolled member fishing with such hook-and-line within the usual and accustomed fishing places of the Nisqually Tribe must carry his or her treaty fisherman identification card or other tribal identification to verify eligibility to exercise treaty fishing rights as a member of the Nisqually Tribe.
- (b) The conditions regarding exclusive possession by the enrolled member of a treaty fisherman identification card, as stated in subsections 14.21.01(c), 14.21.01(c)(i), 14.21.01(c)(ii) and 14.21.01(d) are incorporated within this Section and apply equally here.
- (c) Any enrolled member, regardless of age, may participate in hook-and-line fishing as authorized by this Section and by the Annual and Emergency Fishing Regulations adopted pursuant to this Section.

HISTORICAL AND STATUTORY NOTES

1. This section amended in 1991. Originally created by Ordinance 1-1981.

2. Paragraph (b) altered in 2003 Tribal Code Amendments to correct reference error. Prior reference to 14.21.01(i) and 14.21.01(ii) was erroneous. Corrected as in current text.

14.23.09 Enforcement

- (a) Upon the request of any law enforcement officer, every person fishing or purporting to fish in the exercise of Nisqually Tribal fishing rights or within the boundaries of the Nisqually Reservation is required to produce for inspection such treaty fisherman identification card and fish permits as are required by this Section.
- (b) It shall be unlawful for any person fishing under this Section to interfere with or refuse to allow a tribal fisheries patrol officer to board or to check fish, gear, the identification of persons on board, and otherwise for compliance with this Section.
- (c) It shall be unlawful for any person subject to the jurisdiction of the Nisqually Tribe to take or destroy any property used in the exercise of any fishing rights of the Nisqually Indian Tribe.
- (d) No tribal fishing identification card, boat plaque or fishing permit shall be issued to any person charged with a violation of any Section of this Section.
- (e) Any person whose treaty fisherman identification card or boat plaque is not reported lost pursuant to subsection 14.21.01(d) whose card or plaque is found in the possession of or is being used to sell fish caught by any person who is not the enrolled member or authorized assistant to whom the card was issued, shall have his or her identification card and treaty fishing privileges revoked immediately, pending disposition of the case by tribal court.
- (f) Any violation of this Section may cause any or all fishing gear or any other property used in such violation to be seized and impounded by tribal officers, or tribally commissioned officers, pending disposition of the case by tribal court.
- (g) It shall be unlawful for any person fishing under this Section to fish for any species of salmon off the Nisqually River or elsewhere in the Nisqually Tribe's usual and accustomed marine fishing areas in violation of any regulation promulgated under this Section.
- (h) In any case where an enrolled member or authorized assistant has been convicted in tribal, federal or state court of an offense that is a violation of this Section and is cited for a second offense that is a violation of this Section within twelve months of that previous conviction, such enrolled member or authorized assistant's fishing identification card and all tribal fishing privileges ay be revoked pending disposition of the case in tribal court. Revocation of fishing privileges pending disposition of this second offense shall be a matter of discretion for the tribal court to decide.

- (i) In any case where an enrolled member or authorized assistant has been twice convicted in tribal, federal or state court of offenses that are a violation of this Section and such person is cited for a third offense that constitutes a violation of this Section within twelve months of the two previous convictions, such enrolled member or authorized assistant's treaty fisherman identification card shall be revoked, pending disposition of the case in tribal court. Revocation of fishing privileges pending disposition of this third offense is mandatory.
- (j) Any confiscation of gear pursuant to this Section may include confiscation of fishing identification card, boat plaque, nets, boats, motors or other fishing gear.
- (k) Tribal fisheries enforcement officers are hereby authorized to arrest any person whom they have probable cause to believe has violated this Section and whose violation would constitute a second offense within that fishing season (July 1 of the year of the regulation to June 30 of the following year).
- (l) Any person charged with a violation of this Section may request a hearing before the tribal court.
- (m) Any fish confiscated pursuant to this Section shall be sold in a commercial reasonable manner by an authorized representative of the Nisqually Indian Tribe and all proceeds received therefrom be deposited in the tribal court account. If the sale is impractical, a dollar value shall be assessed at the current selling price and the fish may be distributed to Indian people in the Nisqually Indian Community for their personal consumption.
- (n) Should an individual be found not guilty in the tribal court, all confiscated gear and monies derived from confiscated fish shall be refunded.

HISTORICAL AND STATUTORY NOTES

This section amended in 1991. Originally created by Ordinance 1-1981.

14.23.10 Penalties

Violation by any Indian of any provision of this Section or of the Annual Fishing Regulations shall be an offense against the Nisqually Indian Community and shall be punishable in Nisqually tribal court by the following:

- (a) Forfeiture of identification documents;
- (b) A fine not to exceed \$5000;
- (c) Imprisonment not to exceed six months;
- (d) Temporary or permanent confiscation and/or disposal of any gear or property used in violation of this Section or the Annual Fishing Regulations;

- (e) Revocation of all treaty Indian fishing privileges for a time not to exceed one year (twelve months); and
- (f) Any combination of the above.

HISTORICAL AND STATUTORY NOTES

1. Subsection (b) of this section amended by Tribal Council Resolution 58-2012, dated June 5, 2012.
2. This section amended in 1991. Originally created by Ordinance 1-1981.

14.23.11 Due Process of Law

Suspected violators of this Section or of the Annual Fishing Regulations of the Nisqually Indian Tribe who are subject to the Nisqually Tribe's criminal jurisdiction shall be accorded due process of the law as stipulated in the Law and Order Code adopted by the Nisqually Indian Tribe.

HISTORICAL AND STATUTORY NOTES

This section amended in 1991. Originally created by Ordinance 1-1981.

14.23.12 Severability

Disapproval of any portion of this Section by the Superintendent shall not affect the validity and effectiveness of any other portion of this Section.

HISTORICAL AND STATUTORY NOTES

This section amended in 1991. Originally created by Ordinance 1-1981.